

1 EDMUND G. BROWN JR.
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 CARL W. SONNE
Deputy Attorney General
4 State Bar No. 116253
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3164
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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10 **BEFORE THE**
11 **CALIFORNIA BOARD OF ACCOUNTANCY**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. AC 2009 30

14 **CARL RANDOLPH CASSIDY**
2070 Business Center Dr. #100
15 Irvine, CA 92612

A C C U S A T I O N

16 Certified Public Accountant License No. CPA 54698

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
22 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

23 2. On or about February 2, 1990, the California Board of Accountancy (Board) issued
24 Certified Public Accountant License No. CPA 54698 to Carl Randolph Cassidy (Respondent).

25 The Certified Public Accountant License expired on July 31, 2009, and has not been renewed.

26 The validity of Respondent's license fluctuated from its date of issuance as follows:

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Dates of Valid License	Dates of Invalid License ¹	Unpaid Fees	No Cont.Ed.
2/2/1990 to 7/31/1991	8/1/1991 to 2/27/1994	X	X
2/28/1994 to 7/31/1995			
8/1/1995 to 7/31/1997	8/1/1997 to 8/27/1997	X	X
8/28/1997 to 7/31/1999			
8/1/1999 to 7/31/2001	8/1/2001 to 7/23/2002	X	X
7/24/2002 to 7/31/2003	8/1/2003 to 9/11/2003	X	X
9/12/2003 to 7/31/2005	8/1/2005 to 9/11/2005		
9/12/2005 to 7/31/2007	8/1/2007 to 1/30/2008	X	X
1/31/2008 to 7/31/2009			

JURISDICTION

3. This Accusation is brought before the Board, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 118, subdivision (b), provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 498 states:

A board may revoke, suspend, or otherwise restrict a license on the ground that the licensee secured the license by fraud, deceit, or knowing misrepresentation of a material fact or by knowingly omitting to state a material fact.

6. Section 5050, subdivision (a), states:

¹ Dates of invalid license represent the period of time Respondent did not hold a valid license to practice public accountancy because he did not timely pay his license renewal fees nor comply with continuing education requirements.

1 Except as provided in subdivision (b) and (c) of this section, in subdivision (a)
2 of Section 5054, and in Section 5096.12, no person shall engage in the practice of
3 public accountancy in this state unless the person is the holder of a valid permit to
4 practice public accountancy issued by the board or a holder of a practice privilege
5 pursuant to Article 5.1 (commencing with Section 5096.)

6 7. Section 5051 states:

7 Except as provided in Sections 5052 and 5053, a person shall be deemed to be
8 engaged in the practice of public accountancy within the meaning and intent of
9 [Chapter 1 of Division 3 (commencing with Section 5000)] if he or she does any of
10 the following:

11 (a) Holds himself or herself out to the public in any manner as one skilled in
12 the knowledge, science, and practice of accounting, and as qualified and ready to
13 render professional service therein as a public accountant for compensation.

14 (b) Maintains an office for the transaction of business as a public accountant.

15 (c) Offers to prospective clients to perform for compensation, or who does
16 perform on behalf of clients for compensation, professional services that involve or
17 require an audit, examination, verification, investigation, certification, presentation,
18 or review of financial transactions and accounting records.

19 (d) Prepares or certifies for clients reports on audits or examinations of books
20 or records of account, balance sheets, and other financial, accounting and related
21 schedules, exhibits, statements, or reports that are to be used for publication, for the
22 purpose of obtaining credit, for filing with a court of law or with any governmental
23 agency, or for any other purpose.

24 (e) In general or as an incident to that work, renders professional services to
25 clients for compensation in any or all matters relating to accounting procedure and to
26 the recording, presentation, or certification of financial information or data.

27 (f) Keeps books, makes trial balances, or prepares statements, makes audits,
28 or prepares reports, all as a part of bookkeeping operations for clients.

(g) Prepares or signs, as the tax preparer, tax returns for clients.

(h) Prepares personal financial or investment plans or provides to clients
products or services of others in implementation of personal financial or investment
plans.

"(i) Provides management consulting services to clients.

The activities set forth in subdivisions (f) to (i), inclusive, are 'public
accountancy' only when performed by a certified public accountant or public
accountant, as defined in this chapter.

A person is not engaged in the practice of public accountancy if the only

1 services he or she engages in are those defined by subdivisions (f) to (i), inclusive,
2 and he or she does not hold himself or herself out, solicit, or advertise for clients
3 using the certified public accountant or public accountant designation. A person is
4 not holding himself or herself out, soliciting, or advertising for clients within the
5 meaning of this section solely by reason of displaying a CPA or PA certificate in his
6 or her office or identifying himself or herself as a CPA or PA on other than signs,
7 advertisements, letterhead, business cards, publications directed to clients or potential
8 clients, or financial or tax documents of a client.

9 8. Section 5055 states:

10 Any person who has received from the board a certificate of certified public
11 accountant may, subject to Section 5051, be styled and known as a "certified public
12 accountant" and may also use the abbreviation "C.P.A." No other person, except a
13 firm registered under this chapter, shall assume or use that title, designation, or
14 abbreviation or any other title, designation, sign, card, or device tending to indicate
15 that the person using it is a certified public accountant.

16 9. Section 5070.5, subdivision (a), states:

17 A permit issued under [Chapter 1, commencing with section 5000.1] to a
18 certified public accountant or a public accountant expires at 12 midnight on the last
19 day of the month of the legal birthday of the licensee during the second year of a
20 two-year term if not renewed.

21 To renew an unexpired permit, a permitholder shall, before the time at which
22 the permit would otherwise expire, apply for renewal on a form prescribed by the
23 board, pay the renewal fee prescribed by this chapter and give evidence satisfactory to
24 the board that he or she has complied with the continuing education provisions of this
25 chapter.

26 10. Section 5100 states, in pertinent part:

27 After notice and hearing the board may revoke, suspend, or refuse to renew any
28 permit or certificate granted under Article 4 (commencing with Section 5070) and
Article 5 (commencing with Section 5080), or may censure the holder of that permit
or certificate for unprofessional conduct that includes, but is not limited to, one or any
combination of the following causes:

....

(b) A violation of Section 478, 498, or 499 dealing with false statements or
omissions in the application for a license, in obtaining a certificate as a certified
public accountant, in obtaining registration under this chapter, or in obtaining a
permit to practice public accountancy under this chapter.

....

(g) Willful violation of this chapter or any rule or regulation promulgated by the
board under the authority granted under this chapter. . . ."

REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 52, subdivision (d), states:

A licensee shall provide true and accurate information and responses to questions, subpoenas, interrogatories or other requests for information or documents and not take any action to obstruct any Board inquiry, investigation, hearing or proceeding.

12. California Code of Regulations, title 16, section 87.7, subdivision (a), states:

In order to renew a license in an active status a licensee shall, within the six years preceding the license expiration date, complete a continuing education course on the provisions of the Accountancy Act and the Board of Accountancy Regulations, application to current practice, and other rules of professional conduct. Such course shall be approved by the Board prior to the licensee receiving continuing education credit for the course and shall be a minimum of 8 hours.

13. California Code of Regulations, title 16, section 89, subdivision (b), states:

If credit is claimed for completing the eight hour professional conduct and ethics course specified in Section 87.7, a licensee shall obtain and retain for six years after renewal of his or her license, a certificate of completion or its equivalent disclosing the following information:

(1) Name of licensee

(2) Course title

(3) Board-issued approval number for the professional conduct and ethics course completed by the licensee

(4) School, firm or organization providing the course

(5) Date of completion.

COST RECOVERY

14. Section 5107, subdivision (a), states:

The executive officer of the board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found to have committed a violation or violations of this chapter to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees. The board shall not recover costs incurred at the administrative hearing.

FACTUAL SUMMARY

15. Respondent's license expired on July 31, 2007, without renewal, as set forth in

1 paragraph 2, above. On or about January 31, 2008, the Board received a completed Delinquent
2 Renewal Form with its requisite Continuing Education Worksheet from Respondent requesting
3 "Active" license status for his July 31, 2007 renewal.

4 a. On the renewal form, Respondent ambiguously answered "N/A" and "No" in
5 response to question 4, a requirement due for Respondent. Question 4 on the renewal form states:
6 "Did you complete a Board-approved, 8-hour Professional Conduct and Ethics (PC&E) course
7 during the two years preceding your license expiration date? If yes, also enter the PC&E course
8 information in PART C (No PC&E is required for an inactive renewal or when the PC&E is not
9 due.) See Board's website at www.dca.gov/cba for a complete listing of approved providers."

10 b. On the renewal form's continuing education worksheet for the PC&E course
11 question, Respondent advised the Board that he attended the course titled "Prof. Conduct &
12 Ethics Homestudy," approval number 0195-01-9911, on September 6, 2005. Respondent listed
13 Art Berkowitz Seminars as the course provider.

14 c. On July 21, 2008, in reply to the Board's request to confirm Respondent's completion
15 of the PC&E course on September 6, 2005, Art Berkowitz, provider of the PC&E course, advised
16 that he could not locate any records documenting Respondent's completion of the course for
17 years 2003, 2004, 2005 and 2006. Art Berkowitz advised that Respondent likely did not submit
18 the course for credit.

19 d. On or about January 31, 2008, based upon Respondent's assertions in the Delinquent
20 Renewal Form and its attached Continuing Education Worksheet, the Board renewed
21 Respondent's license to active status.

22 e. On or about April 4, 2008, in reply to the Board's request for continuing education
23 verification (audit), Respondent advised the Board that for the period of August 10, 2007, to
24 February 10, 2008, he "was not involved in the practice of public accounting," and he attached
25 copies of his certificates for completed continuing education credits. Respondent failed to
26 provide a certificate of completion for the required PC&E course that he reported completed on
27 September 6, 2005.

28 f. On July 18, 2008, in reply to a further request for information from the Board,

1 Respondent advised the Board that "During the period August 1, 2007 through February 10, 2008
2 . . . I [he] did not provide any services as a CPA or in any other capacity as an independent
3 contractor to anyone other than as an employee of Deihl."

4 g. On March 30, 2009, Respondent's employer, John W. Diehl of Diehl & Company,
5 Inc., replied to a Board issued subpoena by returning three tax returns prepared by Respondent.
6 Respondent prepared tax returns for others as a paid preparer and executed the practitioner's
7 certification and authentication as "Carl R. Cassidy, CPA" on September 14, 2007, September 17,
8 2007, and October 5, 2007. Thus, Respondent performed certified public accounting services
9 when he failed to hold a valid license.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Practice Without a Valid License)**

12 16. Respondent is subject to disciplinary action under section 5100, subdivision (g), in
13 conjunction with sections 5050, 5051 and 5055, for unprofessional conduct, in that on or about
14 September 14, 2007, September 17, 2007, and October 5, 2007, Respondent willfully practiced
15 and held himself out as a Certified Public Accountant when he failed to have a valid license.
16 Complainant refers to and by this reference incorporates the allegations set forth above in
17 paragraph 15, inclusive, as though set forth fully.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Continuing Education Misrepresentation)**

20 17. Respondent is subject to disciplinary action under section 5100, subdivision (g), in
21 conjunction with California Code of Regulations, title 16, sections 89, subdivision (b), and 87.7,
22 subdivision (a), for unprofessional conduct, in that Respondent willfully misrepresented the
23 completion of continuing education requirements to the Board. Respondent was required to
24 complete a PC&E course by July 31, 2007, in order to renew his license in active status.
25 Respondent falsely reported to the Board that he had completed a PC&E course on September 6,
26 2005. Respondent failed to substantiate that he had completed a PC&E course on September 6,
27 2005, or that he had completed any other PC&E course within the two years prior to his renewal
28 date, July 31, 2007. Complainant refers to and by this reference incorporates the allegations set

1 forth above in paragraph 15, inclusive, as though set forth fully.

2 **THIRD CAUSE FOR DISCIPLINE**

3 **(License Renewal Secured by Misrepresentation of Material Fact)**

4 18. Respondent is subject to disciplinary action under sections 498, and 5100,
5 subdivision (b), in that on Respondent's July 31, 2007 license renewal, he secured his license by
6 fraud and/or deceit by knowingly misrepresenting a material fact. Respondent was required to
7 complete a PC&E course by July 31, 2007, in order to renew his license in active status.
8 Respondent was unable to provide a certificate of completion and falsely reported to the Board
9 that he had completed a PC&E course on September 6, 2005. Based upon Respondent's
10 assertions that he met all requirements for renewal of his license as a certified public accountant,
11 the Board renewed Respondent's license, on or about January 31, 2008. Complainant refers to
12 and by this reference incorporates the allegations set forth above in paragraphs 15 and 17,
13 inclusive, as though set forth fully.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **(Misrepresentation to Board Inquiry)**

16 19. Respondent is subject to disciplinary action under section 5100, subdivision (g), in
17 conjunction with California Code of Regulations, title 16, section 52, subdivision (d), for
18 unprofessional conduct, in that Respondent knowingly and willingly submitted untrue statements
19 to the Board. Complainant refers to and by this reference incorporates the allegations set forth
20 above in paragraphs 15 through 18, inclusive, as though set forth fully.

21 **PRAYER**

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
23 and that following the hearing, the Board issue a decision:


24 1. Revoking or suspending or otherwise imposing discipline upon Certified Public
25 Accountant License No. CPA 54698, issued to Respondent;

26 2. Ordering Respondent to pay the California Board of Accountancy the reasonable
27 costs of the investigation and enforcement of this case, pursuant to Business and Professions
28 Code section 5107; and

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3. Taking such other and further action as deemed necessary and proper.

DATED: January 28, 2010


PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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